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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1971

No. 71-898

NORTHERN CALIFORNIA COLLECTION SERVICE, INC. OF SACRAMENTO, *Petitioner*

vs.

JOSEPH A. RANDONE, et al., and the APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE COUNTY OF SACRAMENTO, *Respondents*

On Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITIONER'S REPLY MEMORANDUM

I.

UNITED STATES SUPREME COURT DOES HAVE JURISDICTION TO REVIEW THIS STATE COURT DECISION

The respondent in his brief first asserts that this Court lacks jurisdiction to review a State Court judgment based upon an adequate and independent non-federal ground. With this proposition we agree;

however, to apply this rule to the *Randone* decision by the California Supreme Court is clearly erroneous. As was asserted in our petition, we feel this case falls squarely within the jurisdictional statement by this Court in *Department of Mental Hygiene v. Krishner,* 380 U.S. 194, 13 L.ed.2d 753, 85 S.Ct. 871, where this Court recognized its jurisdiction when the State Constitution was interpreted under what the State Court deemed the compulsion of the Federal Constitution. (380 U.S. at 198.)

Certainly at the very least we are presented with a situation confronting this Court in *Minnesota v. National Tea Company,* 309 U.S. 551, 84 L.ed. 920. There, the Minnesota Supreme Court in decreeing a state sales tax invalid premised their decision on both the equal protection clause of the United States Constitution and a similar provision regarding taxes in their own Constitution. This Court noted that the Minnesota court had discussed their own Constitution in very general terms and cited a few local cases to support their ruling but went on to discuss cases from this Court interpreting the Federal Constitution's equal protection clause as it applied to similar factual situations. This Court concluded that there was an uncertainty in the Minnesota decision as to whether they premised their opinion upon the State Constitution or the Federal Constitution. In order to obtain a clarification in this regard this Court vacated the decision and remanded it for further amplification. (See also *State Tax Commission v. Van Cott,* 306 U.S. 511, 83 L.ed. 950.)

An excellent discussion of this approach to ambiguous state court decisions was set forth in 74 Harvard Law Review 1375 at 1383:

> "If the state court genuinely felt controlled by a misreading of federal law, clarification by the Supreme Court may well affect the rights of the parties. And, since subsequent state decisions on local law, which will not afford a basis for Supreme Court review, may turn on the court's misinterpretation of federal law, failure of the Supreme Court to hear the case is likely to affect rights in the future; there is not here, as in cases presenting unrelated state and federal questions, any guaranty that the court will have an opportunity to consider the federal question as soon as litigant's rights may be affected thereby. Admitting these distinctions, it nevertheless remains questionable whether the Supreme Court should take jurisdiction merely to protect the rights of litigants where no obvious federal interest seems to be involved. But aside from this objection, the courts practice of vacating and remanding seems well adapted to achieve the desired end, despite the presence, from a strictly analytical viewpoint, of a non-federal ground."

As has been consistently asserted herein, this appellant submits that this case falls clearly within the exception set forth by this Court in the *Department of Mental Hygiene* case, supra; however, should any doubt exist as to the grounds of the California Supreme Court's decision, we ask this Court at the very least to vacate the judgment and remand it for further clarification.

II.

THE PRIMARY CALIFORNIA CASES CITED IN SUPPORT OF THE RANDONE DECISION WERE THEMSELVES DECIDED IN WHAT WAS FELT A COMPULSION BY THIS COURT'S SNIADACH DECISION.

The respondent, in his brief, makes much of the fact that the California Supreme Court cited several local California decisions to support its due process analysis. The citation of these cases, the respondent suggests, evidences an intent by the Court to interpret the California Constitution rather than the Federal Constitution. It is true that the California Supreme Court in *Randone* did cite several of its own decisions. However, the primary cases relied upon by the Court were themselves decided in what was felt a compulsion by this Court's decision in *Sniadach*. The following quotations from these cases illustrate this fact:

In *McCallop v. Carberry*, 1 Cal.3d 903, the Court noted:

> "As will appear, we have concluded that the trial court was correct in ruling that California's prejudgment wage garnishment procedure violates procedural due process under the rationale of the recent decision of United States Supreme Court in *Sniadach v. Family Finance Corporation* (1969) 395 U.S. 337 [23 L.ed.2d 349, 89 S.Ct. 1820]."

And in the companion case of *Cline v. Credit Bureau of Santa Clara Valley*, 1 Cal.3d 908, the Court stated:

> "As concluded in *McCallop v. Carberry*, ante, p. 903 [83 Cal. Rptr. 666, 469 P. 2d 122] the pre-

judgment wage garnishment procedure attacked by plaintiff must be ruled invalid under the rationale of *Sniadach.*"

And in *Blair v. Pitchess,* 5 Cal.3d 258, holding California's claim and delivery procedure unconstitutional, the Court said:

> "In determining the proper application to the present case of a due process requirement of the Fourteenth Amendment of the United States Constitution and Section 13 of Article I of the California Constitution we are necessarily guided in large part by the recent decision of the United States Supreme Court in *Sniadach v. Family Finance Corporation,* 395 U.S. 337 [23 L.ed.2d 349, 89 S.Ct. 1820]."

We submit that the California Supreme Court has misread this Court's intention in *Sniadach.* This misinterpretation has compounded itself to such an extent that clarification by this Court is desperately needed.

Dated, Sacramento, California,
March 30, 1972.

Respectfully submitted,
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of
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